



Articles and containers of chemicals

Introduction

This short guide has been prepared for those who are manufacturing or importing finished goods, which may be classed as “articles” or containers of chemicals under REACH, and need to know the obligations under REACH.

Of course, REACH isn’t the only piece of legislation to affect the supply of finished goods. There is added complication for many suppliers in that other EU legislation may apply; for example, toys, medical devices, electronic equipment, food packaging and other goods are covered by their own explicit requirements that go beyond the basics of REACH. However, these items are not exempt from REACH; compliance with REACH does not preclude the breach of other legislation.

Three basic scenarios have been identified and the obligations under each of these are described in this guide. If help is required in deciding which scenario fits your situation, REACHReady can offer advice to our Gold subscribers via our Helpdesk (enquiries@reachready.co.uk).

Three scenarios of supply

The term “supply” is used in this guide to define the activity of companies in the EEA that sell, give away or make available products, whether produced by them, produced by others within the EEA or imported from non-EEA countries. Not everyone will have the same legal requirements under REACH, but it is important to see the whole supply chain to make sense of the regulation.

- Scenario 1: Supply of an item containing “loose” chemicals: containers and carriers

These finished goods include many manufactured items that, in the early days of REACH, were considered to be articles. However, the interpretation of the term “article” from the official Guidance on Articles considers these products as containers of chemicals. A few examples of such containers are pens, printer cartridges, cans of spray paint and impregnated wipes such as wet wipes.

The ECHA guidance has clarified that desiccant bags and candles are containers and carriers respectively of chemicals, rather than articles with integral substances or mixtures.

- Scenario 2: Supply of articles that were made using potentially hazardous chemicals

To work out if this scenario applies to you the first thing to do is to find out if hazardous chemicals were used in the production of your goods. If you are the producer and the items are not complex, this task is comparatively easy; if you are importing or supplying finished articles, particularly comprising many sub-assemblies, you may need to rely on your suppliers for this information. The second stage is to consider the release of the substance: is it either deliberate or incidental.



- Scenario 3: Supply of articles that do not contain hazardous chemicals

Only by following procedures outlined in the Scenario 2 above will you get to this stage. If your product neither intentionally releases chemicals nor contains dangerous substances, REACH has no further impact on your supply.

Scenario 1

Supply of chemicals contained by an article: ink in a pen

Under this scenario, the ink in a pen is treated like any other chemical being supplied. In other words, supplying a pen means supplying the ink. Therefore, the EEA manufacturer or importer must register the individual substances that fall in scope of REACH registration.

If you are the importer of the pen:

You are the importer of the chemical (ink) and you may be liable for registration for the individual substances imported at 1 tonne or more per year. You may be relieved of your obligation to register if the non-EEA manufacturer of the substances or the formulator of the ink has arranged for an “Only Representative” to register on your behalf.

If you buy the substances or mixtures to assemble the finished item yourself, for example, if you buy the finished ink, or the individual pigments, solvents, polymers and additives to make the ink:

The substances used to make the ink may be subject to registration. If you buy these chemicals from within the EEA, your suppliers should be taking care that the chemicals are REACH registered, but we advise that you check that they are aware of their obligations. If you are importing the substances from outside the EEA, then your any obligation to register falls to you or your supplier’s Only Representative (where relevant).

Scenario 2

Supply of articles made using potentially hazardous chemicals

Everything that is not a “chemical” or a ‘mixture of chemicals’ is typically defined as an article. Therefore, coins, paper bags, socks, doors etc are all articles. In most cases, these are supplied without ‘loose’ chemicals and the typical chemical composition will include adhesives, dyes, polymers, alloys, paint, ink etc. Where the shape, surface finish or design of a shaped alloy is more important than its chemical composition to the primary function it is regarded as an article. Likewise, the “containers” described in Scenario 1 are themselves articles and the information in this scenario will apply to these – a pen lid would be an article in its own right if supplied separately from the rest of the pen.

If a chemical is intentionally released from an article (there are very few examples, but commonly discussed at REACHReady workshops are:



- corrosion-inhibiting packaging (such as plastic wraps releasing gas phase anti-corrosion chemicals);
- items of clothing releasing moisturisers during use;
- fragrances released from a scented coat hanger.

The released substances may be subject to registration. If you make such an article in the EEA and put the chemical in yourself, you will need to make sure it is registered up the supply chain for your use (or do it yourself if importing). If you import such an article, your obligations are to identify the substance and ensure registration for the released substances.

The vast majority of articles do not fit into the “intentional release” category. However, REACH is also concerned with the presence of “substances of very high concern” or SVHC (these are defined in the attached annex) in articles and whether there is a perceivable risk to either human health or the environment. The issue is twofold: firstly, disclosure to customers, and secondly, notification to ECHA where exposure is possible during use or disposal, even if unintentionally².

Where an article contains an SVHC on the Candidate List for Authorisation above 0.1% w/w in the article, suppliers need to inform their business customers, even if the article is supplied free of charge (Article 33 (1)). Notification to ECHA may be required if over 1 tonne of that substance is imported within the total number of such articles (Article 7 (2)). There is also an obligation to inform consumers on request if the article contains an SVHC on the Candidate List above 0.1% w/w with suppliers having 45 days to respond (Article 33 (2)).

Due to the European Court of Justice (ECJ) ruling on 10 September 2015, both notification communication and duties (Articles 7(2) and 33 respectively) have changed. The interpretation of these articles must now be to include not just the finished article itself, but also any constituent articles it's composed of. Importers of complex products are most affected since a large amount of testing for substances or, much more preferably, communication with non-EU suppliers is required to comply with SVHC notification duties. Producers are also under increased notification duties with respect to constituent articles they produce. Any supplier of articles must communicate information about SVHCs present in their finished product and its constituent articles to professional customers – and if requested to non-professional consumers.

The inclusion of a substance on the Candidate List triggers the SVHC disclosure duties. There are some steps that may help you meet your obligations:

1. If manufacturing articles in the EEA: ensure constituent chemicals do not contain substances of very high concern that may be included on the Candidate List if not already listed. If worried, ask your suppliers and find less hazardous alternatives where possible.
2. If importing articles, ask your non-EEA suppliers to verify the chemical makeup of the articles. You may also wish to have (potential) SVHCs formulated out of the products. It is appreciated that this could be ultimately very difficult; EEA purchasers often have little control of the chemical composition of imported goods. Remember that the Candidate List does not prohibit the import of articles containing SVHCs. However, Annex XVII to REACH



restricts the presence of certain substances in articles; it is your duty as an importer to ensure your products comply, not the non-EEA producer.

3. Be prepared to answer questions from your customers. All questions, and responses, should be kept as records that you are showing you are working with your supply chain to meet your Article 33 obligations. If your supplier provides false information to you or they are misinformed, you must be able to demonstrate that you took all reasonable care in finding out the chemical composition, which might include chemical testing to identify particular SVHCs in your products.

There are pieces of commercial software that may help track substance use in the supply chain, such as Bill of Substance systems. Under the REACHReady Matchmaker scheme we have a number of Approved Service Providers who can provide suitable, relevant IT solutions to help you meet your Article 33 obligations – contact the Helpdesk at enquiries@reachready.co.uk for further details.

Scenario 3

Supply of articles not containing potentially hazardous chemicals

Having completed Scenario 2, you now know that your products do not contain hazardous chemicals that are likely to end up on the Candidate List for Authorisation; for example, you supply clothing or leather goods that do not have ingredients that are CMRs, persistent, bioaccumulative and toxic, or very persistent and very bioaccumulative. In these cases, you can continue to supply the goods in the same way as before REACH came into effect, with perhaps the added reassurance that there is less likelihood of there being unknown health or environmental risks from your products. However do be aware that the Candidate List for Authorisation is continuously updated by ECHA thus it is important to keep abreast of the changes. In other words, this compliance is ongoing and not a one-off task. The absence of SVHCs and substances intended to be released does not mean that REACH can be forgotten about. On-going compliance checks are necessary such as periodically checking with suppliers that the chemical composition of products has not changed etc.

Even so, your customers may well ask you questions about SVHCs and other chemicals in your articles and we advise that you prepare a standard response for such situations. Where Scenario 3 fits your circumstances you are not legally obliged to provide to your customers a complete breakdown of every chemical used in the processes/products by yourself or your own suppliers. Our Gold subscribers can access a REACHReady template letter pack updated recently to include templates to cover the supply of articles with respect to Article 33 obligations.

Need further help?

Need further help understanding your position? Not sure of your obligations under REACH as a supplier? Our Gold subscribers can speak to one of our technical team by contacting the REACHReady Helpdesk at enquiries@reachready.co.uk or on +44 (0) 207 901 1444.



REACHReady References

¹ ECHA's Guidance on Articles can be found at

https://echa.europa.eu/documents/10162/23036412/articles_en.pdf/cc2e3f93-8391-4944-88e4-efed5fb5112c

² e.g. disc brakes on a car wear and release substances, however this release is not regarded as intentional (in general, release due to wear or maintenance is not considered intentional under REACH) but if one of these released substances is an SVHC you might need to Notify the Agency.